



# User Guide Statement of Family Law Value Former Plan Member with a Defined Benefit or a Combination Benefit FSCO Family Law Form 4D

## Information About This Statement

This form is to be completed by the pension plan administrator or the Plan Administrator's authorized agent or representative (Plan Administrator). The information provided in this User Guide is in summary form only and should not be substituted for a complete review of the applicable provisions of the [Ontario Pension Benefits Act \(PBA\)](#) and [Ontario Regulation 287/11 \(Regulation 287/11\)](#) made thereunder. It is the responsibility of the Plan Administrator to ensure compliance with the statute and regulation.

This form is a **Statement of Imputed Value** prescribed under section 24 of Regulation 287/11. The imputed value for family law purposes under section 67.2(5) of the PBA is called the Family Law Value in this Statement. The Family Law Value must be calculated as of the Family Law Valuation Date determined in accordance with section 67.1 of the PBA.

This Statement applies to a member of a pension plan who had terminated employment or plan membership (Former Member) as of the Family Law Valuation Date and who has a defined benefit under the pension plan or a combination of a defined benefit and a defined contribution benefit (i.e. is entitled to both types of benefits). In other circumstances, refer to the list of the Financial Services Commission of Ontario's (FSCO) Family Law Forms and use the statement that applies to the Former Member.

The information provided in this Statement is required for the court order, family arbitration award or domestic contract that will provide for any division of the Family Law Value and to complete an **Application to Transfer the Family Law Value (FSCO Family Law Form 5)**.

Upon receipt of a **completed Application for Family Law Value (FSCO Family Law Form 1)** the Plan Administrator must provide a copy of this Statement (at the same time) to both the applicant and the applicant's spouse/former spouse, within **60 days**, in accordance with section 67.2(9) of the PBA and section 25 of Regulation 287/11.

If the Plan Administrator is not the employer (e.g. as in the case of a multi-employer pension plan), the Plan Administrator will need to obtain information from the employer to complete this Statement. In such cases, the Plan Administrator must make best efforts to obtain the necessary information from the employer in order to provide a copy of this Statement to both the applicant and the applicant's spouse within the 60 day period.

If the **Application for Family Law Value (FSCO Family Law Form 1)** is not complete, the Plan Administrator may complete the **Plan Administrator Request for Information/Payment of Fee (FSCO Family Law Form 1A)** to inform the applicant of any deficiencies. The 60 day period will start from the day the Plan Administrator receives a correctly completed **Application for Family Law Value (FSCO Family Law Form 1)** accompanied by all required documents and the fee (if any).

The Plan Administrator may insert relevant information (e.g. bar codes, plan name or registration number, etc.) in the "For Plan Administrator Use" box.

**Note:** This form must not be altered in any manner. However, the Plan Administrator or its authorized agent or representative may pre-populate the form with plan-specific information, e.g. name and registration number of the pension plan, etc. and may post these pre-populated forms on their own website. It is the responsibility of the Plan Administrator, however, to ensure that the current version of this form (i.e. the version that is posted on FSCO's website) is always provided to applicants. It is essential that Plan Administrators check FSCO's website from time to time to ensure that the current form is used.

## Part A Family Law Value

**Refer to section 24 of Regulation 287/11.**

Complete the information about the Former Member and his/her spouse/former spouse, and identify who the applicant is.

If an applicant has completed **Appendix A** of the **Application for Family Law Value (FSCO Family Law Form 1)** because there are two proposed Family Law Valuation Dates, you must prepare two **Statements of Family Law Value (FSCO Family Law Form 4D)**. The applicant and his/her spouse/former spouse are entitled to receive both Statements, each showing a different Family Law Value based on one of the two proposed Family Law Valuation Dates.

Complete the information related to the starting date of the spousal relationship using the information provided by the applicant under **Part E** of the **Application for Family Law Value (FSCO Family Law Form 1)**.

Complete the Family Law Valuation Date using the information provided by the applicant under **Part F** of the **Application for Family Law Value (FSCO Family Law Form 1)**.

Information about the Family Law Value and the maximum amount that may be assigned and transferred to the former spouse of the Former Member should be completed at the very end. **Appendix E** (Worksheet for Family Law Value Calculations) of this Statement must be completed first.

## Part B Pension Plan Information

**Refer to section 24(2)1 of Regulation 287/11.**

Complete the pension plan information. Section 8 of the PBA sets out who can be the Plan Administrator.

## Part C Former Member Information

**Refer to section 24(2)2 of Regulation 287/11.**

Complete the information about the Former Member using the information provided by the applicant under **Part C** of the **Application for Family Law Value (FSCO Family Law Form 1)**.

Complete the information about the Contact Person for the Former Member if you have received a **Contact Person Authorization (FSCO Family Law Form 3)**, a certified copy of a power of attorney for property or a certified copy of the court order that appointed this person.

The Plan Administrator must be able to provide a copy of the **Statement of Family Law Value (FSCO Family Law Form 4D)** to both the applicant and his/her spouse/former spouse or to their contact person(s) (if any), or the Statement cannot be issued.

#### **Part D** **Spouse/Former Spouse of the Former Member Information**

**Refer to section 24(2)2 of Regulation 287/11.**

Complete the information about the spouse/former spouse of the Former Member using the information provided by the applicant under **Part D** of the **Application for Family Law Value (FSCO Family Law Form 1)**.

Complete the information about the Contact Person for the spouse/former spouse of the Former Member if you have received a **Contact Person Authorization (FSCO Family Law Form 3)**, a certified copy of a power of attorney for property or a certified copy of the court order that appointed this person.

The Plan Administrator must be able to provide a copy of the **Statement of Family Law Value (FSCO Family Law Form 4D)** to both the applicant and his/her spouse/former spouse or to their contact person(s) (if any), or the Statement cannot be issued.

#### **Part E** **Transfer Options for the Former Spouse of the Former Member**

**Refer to section 24(6) of Regulation 287/11.**

Check the transfer option(s) that is/are available to the former spouse of the Former Member. Note that not all options can be offered to the former spouse.

Any entitlement that the former spouse may have to a commutation of a small amount is to be determined based on the value of his/her share of the Family Law Value and based on the YMPE as at the Family Law Valuation Date. The small amount is not to be determined based on the total Family Law Value (i.e. the amount before division).

If the Former Member has made an application to the Plan Administrator in circumstances of shortened life expectancy, determine if sections 12 or 13 of Regulation 287/11 apply. If the conditions under sections 12 or 13 have been satisfied, the Former Member's deferred pension must be paid to both the Former Member and the Former Member's former spouse on an unlocked basis.

There will be no transfer options if the Plan Member terminates employment or plan membership and his/her pension entitlement is paid out in full from the pension plan between the time this Statement is issued and the time the former spouse of the Plan Member gives the completed **Application to Transfer the Family Law Value (FSCO Family Law Form 5)** to the Plan Administrator.

If applicable, the court order, family arbitration award or domestic contract should set out whether the former spouse's share of the Family Law Value will be transferred from the defined benefit component or the defined contribution benefit component, or from both components, and in what amounts. If the court order, family arbitration award or domestic contract is silent, the Plan Administrator may transfer an equal share of the Family Law Value from both components.

Note: The rules for maximum transfer limit set out in section 8517 of the *Income Tax Act* (Canada) Regulations do not apply to the former spouse.

## Part F Pension Fund Status

**Refer to section 24(7)2 of Regulation 287/11.**

The transfer ratio of the pension plan as of the valuation date of the most recent valuation report made under section 3 or 14 of Ontario Regulation 909 must be reported in this Part.

Note that it is the transfer ratio of the pension plan on the date when payment is to be made to the former spouse of the Former Member that determines any limits on the payment. If the former spouse submits an **Application to Transfer the Family Law Value (FSCO Family Law Form 5)** to the Plan Administrator, the Plan Administrator should explain any payment restrictions to the former spouse (e.g. reason for the restriction, when the final payment will be made, etc.).

## Part G Certification by the Plan Administrator or Plan Administrator's Agent or Representative

**Refer to section 24(8) of Regulation 287/11.**

Complete the date when the completed **Application for Family Law Value (FSCO Family Law Form 1)** was received from the applicant. The Plan Administrator must provide this Statement to both the applicant and his/her spouse/former spouse within **60 days** of receiving a completed application.

Confirm the nature of the Former Member's entitlement under the pension plan and that the required appendices have been completed by checking the applicable boxes.

Certify the information shown on the Statement by signing and dating it. If the Plan Administrator's authorized agent or representative has completed and signed this Statement, contact information about the Plan Administrator's authorized agent or representative must also be provided.

## Next Steps

**Refer to section 26 of Regulation 287/11.**

In this Part, list the additional information or documents that must be provided before the Family Law Value can be divided and the former spouse of the Former Member's share transferred out of the pension plan. Some examples that may be listed are: Canada Revenue Agency form(s) required for any lump sum transfers; locking-in agreements that must be completed if the former spouse wishes to transfer his/her share of the Family Law Value to a financial institution; or information relating to another registered pension plan if the former spouse wants to transfer his/her share of the Family Law Value to another pension plan willing to accept it.

## **Appendix A – Plan Membership, Employment, Additional Voluntary Contribution and Excess Member Contribution Information as of the Family Law Valuation Date**

Refer to sections 24(2)3 and 24(5)1 to 3 of Regulation 287/11.

### **Plan Membership and Employment Information as of the Family Law Valuation Date:**

Complete the information about the Former Member's employment/membership in the pension plan and the date when he/she became a retired member (if applicable) after the Family Law Valuation Date.

Complete the information about the Former Member's credited service. When calculating the period of credited service, use the method set out in the pension plan. If the pension plan does not set out a specific formula, indicate the period of credited service in years and months.

### **Additional Voluntary Contributions (AVCs) Information as of the Family Law Valuation Date:**

AVCs are reported for disclosure purposes only. AVCs must not be including in the Preliminary Value in accordance with section 3(3) of Regulation 287/11. As provided in section 67.3(6) of the PBA, AVCs are not subject to the 50 per cent maximum division rule. The payment of AVCs is subject to terms of the pension plan.

### **Excess Member Contributions as of the Family Law Valuation Date:**

Excess member contributions that remain in the pension plan on the Family Law Valuation Date are reported for disclosure purposes only. Excess member contributions must not be included in the Preliminary Value in accordance with section 3(4) of Regulation 287/11. As provided in section 67.3(6) of the PBA, excess member contributions are not subject to the 50 per cent maximum division rule.

## **Appendix B – Explanation of Pension Plan Provisions that Apply to the Former Member as of the Family Law Valuation Date**

Refer to section 24(7)1 of Regulation 287/11.

Provide information about the pension plan provisions that apply to the Former Member or attach them to the Statement. In the latter case, check the box to indicate that you are attaching the information.

## **Appendix C – Actuarial Assumptions Used in the Calculation of the Family Law Value as of the Family Law Valuation Date**

Refer to section 24(3) of Regulation 287/11.

The actuarial methods and assumptions used to determine the Family Law Value must be provided in this Appendix or attached to the Statement. In the latter case, check the box to indicate that you are attaching the information.

Section 3(2) of Regulation 287/11 requires that section 3500 of the [Canadian Institute of Actuaries' Standards of Practice](#) (2010 version) be applied when calculating the Preliminary Value, regardless of the Family Law Valuation Date. This means that the methods and actuarial assumptions in section 3800

of the Canadian Institute of Actuaries' Standards of Practice or in any older version of the standards of practice should not be used, even if the Family Law Valuation Date is a date before January 1, 2012.

If the Former Member has filed a shortened life expectancy application and the conditions set out in sections 12 or 13 of Regulation 287/11 have been satisfied, the Preliminary Value is the same as the commuted value as determined under section 49 of the PBA, based on the shortened life expectancy of the Former Member.

## Appendix D – Full or Partial Plan Wind up/Surplus/Plan Amendments

Refer to sections 24(7)3 to 24(7)6 of Regulation 287/11.

### Information about the full or partial wind up of the pension plan:

Check the "Yes" box if the pension plan has been wound up in full or in part, the Former Member is included in the wind up group, and the effective date of the wind up is **on or before the date when this Statement is issued**. Otherwise, check the "N/A" box and do not complete this section.

If the pension plan has been wound up in full or in part, the Former Member is included in the wind up group, and the effective date of the wind up is **on or before the Family Law Valuation Date**, the Preliminary Value of the deferred pension is the same as the wind up value (i.e. the commuted value) of the deferred pension, accumulated with interest from the effective date of the wind up to the Family Law Valuation Date, in accordance with section 14 of Regulation 287/11.

If the effective date of the wind up or partial wind up is after the Family Law Valuation Date, the Preliminary Value is determined without reference to the wind up or partial wind up.

### Surplus Application Made On or Before the Family Law Valuation Date:

Check the "Yes" box if the Former Member is entitled to receive a share of surplus from the pension plan. Otherwise, check the "N/A" box and do not complete this section.

If the surplus amount is not known at the time when this Statement is being prepared, provide the relevant details of the surplus application (e.g. information about the surplus sharing agreement, etc.).

If the Former Member's surplus entitlement is known at the time when this Statement is being prepared, the surplus amount must be added to the Preliminary Value of the deferred pension in accordance with section 15 of Regulation 287/11.

### Pension Plan Amendments Before the Family Law Valuation Date:

Check the "Yes" box if the Former Member belongs to a class of employees that received (or will be receiving) payment(s) resulting from amendment(s) to the pension plan related to cost of living adjustments during the last three fiscal years of the pension plan before the Family Law Valuation Date. Otherwise, check the "N/A" box and do not complete this section.

If applicable, provide an explanation of the amendment(s). If there is more than one, start with the amendment made in the most recent fiscal year.

## Appendix E – Worksheet for Family Law Value Calculations

Note: A completed Statement, including the information that must be provided in this Appendix, must be sufficient for an independent verification of the Preliminary Value and Family Law Value calculations.

**Information About the Former Member's Defined Benefit as of the Termination of Employment or Plan Membership Date for Calculation 1:**

Complete the information under this section. Do not complete this section if the pension plan was wound up in full or in part, the Former Member is included in the wind up group and the effective date of the wind up is on or before the Family Law Valuation Date.

The Former Member's age must be expressed using the method set out in the pension plan. If the pension plan does not set out a specific method, calculate the age in years and months.

**Step 1 – Calculation of Preliminary Value as of the Family Law Valuation Date**

**Refer to section 24(3) of Regulation 287/11.**

The Preliminary Value is the total value of the pension accrued by the Former Member during the period of his/her membership in the pension plan as of the Family Law Valuation Date.

The Preliminary Value of the defined benefit must be calculated in accordance with section 8 of Regulation 287/11. The Preliminary Value of the defined contribution benefit (if applicable) must be calculated in accordance with sections 3(6) and 5 of Regulation 287/11. Note that neither additional voluntary contributions nor excess member contributions (if any) are included in the Preliminary Value.

Complete:

- (i) **Calculation 1** if the Former Member has only a defined benefit under the pension plan.
- (ii) **Calculations 1 and 2** if the Former Member has a combination of a defined benefit and a defined contribution benefit under the pension plan.
- (iii) **Calculation 3** if the pension plan was wound up in full or in part, the Former Member is included in the wind up group and the effective date of the wind up is on or before the Family Law Valuation Date.

**Calculation 1 – Preliminary Value of the Former Member's defined benefit as of the Family Law Valuation Date**

**Refer to section 8 of Regulation 287/11.**

The Preliminary Value of a Former Member's defined benefit must be calculated in accordance with section 8 of Regulation 287/11. It is the commuted value of the deferred pension as of the Family Law Valuation Date adjusted to include the commuted value of any ancillary benefits (if any) for which, as of the Family Law Valuation Date, the Former Member has met all eligibility requirements necessary to exercise the right to receive those benefits. It also includes any surplus payable to the Former Member in accordance with section 15 of Regulation 287/11. Note that additional voluntary contributions and excess member contributions (if any) are not included in the Preliminary Value.

**Calculation 2 – Preliminary Value of the Former Member’s defined contribution benefit as of the Family Law Valuation Date**

**Refer to section 5 of Regulation 287/11.**

Check “N/A” if this calculation does not apply to the Former Member and do not complete this section.

The Preliminary Value of a Former Member’s defined contribution benefit (if applicable) must be calculated in accordance with section 5 of Regulation 287/11. Note that additional voluntary contributions and excess member contributions (if any) are not included in the Preliminary Value.

If the Preliminary Value (i.e. the total value of the Former Member’s defined contribution benefit with interest/investment earnings credited to the Family Law Valuation Date) can be determined as of the Family Law Valuation Date, complete **Section 1**. Otherwise, complete **Section 2**.

**Calculation 3 – Full or Partial Wind Up**

**Refer to section 14 of Regulation 287/11.**

Check “N/A” if this calculation does not apply to the Former Member and do not complete this section.

**Information about the Former Member’s Accrued Pension (Defined Benefit) as of the Full or Partial Wind Up Date and Information about the Former Member’s Preliminary Value (Defined Benefit) as of the Family Law Valuation Date**

Complete the information under these sections if the pension plan was wound up in full or in part, the Former Member is included in the wind up group, and the effective date of the wind up is on or before the Family Law Valuation Date. Indicate if the pension plan was wound up in full or in part by checking the applicable box.

**Step 2 – Calculation of Family Law Value as of the Family Law Valuation Date**

**Refer to section 24(4) of Regulation 287/11.**

The Family Law Value is the portion of the Preliminary Value that relates to the period of the spousal relationship (married or common-law) as of the Family Law Valuation Date. The Family Law Value is the “imputed value” in the PBA.

**Calculation 4 – Family Law Value of the Former Member’s defined benefit as of the Family Law Valuation Date**

**Refer to section 18 of Regulation 287/11.**

**Formula for the Family Law Value = Preliminary Value [G (defined benefit) + surplus] x H/J**

**H** = total credited service accrued by the Former Member during the period beginning on the starting date of the spousal relationship and ending on the Family Law Valuation Date

**J** = total credited service accrued by the Former Member during the entire period of employment/plan membership as of the Family Law Valuation Date

Note that the ratio **H/J** cannot exceed 1. Use the credited service information that is reported under Appendix A of this Statement.

### **Calculation 5 – Family Law Value of the Former Member’s defined contribution benefit as of the Family Law Valuation Date**

**Refer to section 19 of Regulation 287/11.**

Check “N/A” if this calculation does not apply to the Former Member and do not complete this section.

The account balance in the calculations is the total amount of the contributions, including interest/investment earnings on the contributions, attributable to the Former Member.

Complete **Section 1** if the starting date of the spousal relationship is **before the date** when the Former Member joined the pension plan. If this does not apply to the Former Member, check the “N/A” box and complete one of the three calculations under Section 2.

Complete **Calculations 1, 2 or 3 of Section 2**, whichever applies. Check the “N/A” box for the calculations that do not apply to the Former Member. Calculation 1 must be completed if information is available to complete this calculation. If information is not available to complete Calculation 1, then complete Calculation 2. If information is not available to complete Calculation 2, then complete Calculation 3 (use the credited service information that is reported under Appendix A of this Statement). Note that you cannot randomly choose which calculation to complete.

<b>Step 3 – Maximum Amount that May Be Assigned and Transferred to the Former Spouse of the Former Member as of the Family Law Valuation Date</b>
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**Refer to section 67.3(6) of the PBA.**

The maximum amount of the Family Law Value that may be assigned and transferred to the former spouse of a Former Member must be calculated separately for the Family Law Value of the defined benefit (**Calculation 4 of Step 2**) and the Family Law Value of the defined contribution benefit, if applicable (**Calculation 5 of Step 2**), and then added together to arrive at the total amount.

The former spouse cannot be entitled to more than 50 per cent of the Family Law Value of the defined benefit and defined contribution benefit (if applicable).